SUPREME COURT OF THE UNITED STATES.

No. 55.—October Term, 1925.

Old Dominion Land Company, Plaintiff in Error, *vs.* The United States of America.	In Error to the United States Circuit Court of Appeals for the Fourth Circuit.

[November 16, 1925.]

Mr. Justice Holmes delivered the opinion of the Court.

This is a proceeding for the condemnation of land in Newport News, Virginia, for the use of the United States. Act of August 1, 1888, c. 728; 25 Stat. 357. It has resulted in a condemnation fixing the sum to be paid, subject to questions of law reserved by the plaintiff in error, the Old Dominion Land Company, at the trial and decided by the Circuit Court of Appeals. 296 Fed. Rep. 20.—During the late war the Government took leases of the land from the Old Dominion Land Company for military purposes and put structures upon it costing more than a million and a half dollars. The leases were for short terms and were renewed, until in 1922 the lessor refused to renew them again. By the terms of the agreements the United States had a right to remove the structures but not beyond thirty days from the termination. An offer to purchase the land was made by the United States but was refused and this proceeding was instituted on July 29, 1922, just before the thirty days allowed by the leases had run out. The main contentions of the plaintiff in error are that the Acts of Congress relied upon do not authorize the taking attempted here; that one of those Acts is unconstitutional, and that the taking although it might be for the benefit of the United States, to save its buildings, was not a taking for public use. We are of opinion that these contentions so far as material to the case cannot be sustained and that the decision below was right.

The statute authorizes this proceeding. The Appropriation Act of July 11, 1919, c. 8, 41 Stat. 104, 128, and its Amendments of the same year, c. 44; *ibid.* 278, and c. 90; *ibid.* 453, had stopped the purchase of land in connection with military purposes gener-

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ally, except in certain cases when it was more economical to buy than to pay rent or damages. This Act was further amended however by the Act of March 8, 1922, c. 100, § 1; 42 Stat. 418, so as to "authorize completion of the acquisition of the real estate hereinafter specified in respect whereof requisition notices had been served or given before July 11, 1919, . . . or in respect whereof agreements had been made for purchase thereof, or proceedings begun for condemnation thereof." "For the purpose of carrying out the provisions of this section the following amounts are hereby authorized to be appropriated, to wit: . . . for quartermaster warehouses, Newport News, Virginia, $223,670." This is the land in question. By § 3 of the same Act the Secretary of War was authorized to renew leases in order to enable the Government to remove its buildings and other property, and to approve awards and to have new awards made for the purchase or condemnation of land necessary in his judgment for the operation of water plants now located thereon, &c., provided "that any addition to the value of the premises resulting from the improvements thereto or in the vicinity thereof made by or at the expense of the United States shall be excluded from the sum paid to or recovered by the owners." The later Deficiencies Appropriation Act of July 1, 1922, c. 258, 42 Stat. 767, 777 supplies deficiencies: "Sites for military purposes: For completion of acquisition of real estate as authorized by" the last mentioned Act: "For quartermaster warehouses, Newport News, Virginia, $223,670."

It is argued that the general purpose of this exception to the stopping of expenditures was only to carry out agreements by which the Government already was bound; and that the specific appropriations were made only in case the property mentioned was the object of such previous agreement. No doubt the general purpose was that suggested, but the rest of the Act showed that the appropriation was not confined to that alone, and the specific unqualified mention of the land in question as land of which the acquisition was to be completed overrides the general statement, however much confirmed by citations from the congressional debates.

Then it is said that the Act of March 8, 1922, was unconstitutional by reason of the proviso that we have stated, excluding from the compensation improvements upon the land or in the vicinity thereof made by the United States. There might be cases in which

this provision could not be sustained, but there is no trouble here. For supposing that the proviso were extended beyond the taking in aid of a water plant to which it immediately referred, it could have no bearing except upon the issue agreed to by counsel, "whether the value of the warehouses constructed by the United States Government on the lands sought to be condemned should be included in the valuation of said lands." But upon this issue the statute was superfluous. When these proceedings were begun the buildings belonged to the United States. It would not be just to allow the delay necessary in legal proceedings to deprive the United States of rights that it had and endeavored by this suit to assert. *Consolidated Turnpike Co.* v. *Norfolk & Ocean View Ry. Co.*, 228 U. S. 596, 602. In the often quoted language of Chief Justice Shaw: "If a pie-powder court could be called on the instant and on the spot, the true rule of justice for the public would be, to pay the compensation with one hand, while they apply the axe with the other." *Parks* v. *Boston*, 15 Pick. 198, 208. It in no way appeared that the value of the land was increased by other improvements in the vicinity, or otherwise than by the structures upon the land so that the most indefensible aspects of the statute are not before us here. Furthermore the instructions to the jury were that they were to determine the fair market value of the land as well for its present purposes as for those for which it might be reasonably adapted at the time or in the immediate future, and to take into consideration the facts and circumstances of its location, &c., with no language that excluded consideration of improvements in the vicinity, if any there were.

But it is said that the taking was not for a public use, because it is said that the Secretary of War at least was thinking not of a future use of the land by the public or the Government but of saving the country from the loss of the buildings. We shall not inquire whether this purpose was or was not so reasonably incidental to the necessarily hurried transactions during the war as to warrant the taking, upon the principle illustrated by *Brown* v. *United States*, 263 U. S. 78. Congress has declared the purpose to be a public use, by implication if not by express words. If we disregard the heading quoted from the latest Act, 'Sites for military purposes', which we see no reason for doing, and treat 'For quartermaster warehouses' as descriptive rather than prospective, still there is nothing shown in the intentions or transactions of

subordinates that is sufficient to overcome the declaration by Congress of what it had in mind. Its decision is entitled to deference until it is shown to involve an impossibility. But the military purposes mentioned at least may have been entertained and they clearly were for a public use.

Some question is made as to whether a letter from the Secretary of War to the Attorney General sufficiently authorized the present proceedings by showing that in his opinion it was necessary or advantageous to the Government to take them. The Act of August 1, 1888, c. 728; 25 Stat. 359, allows the Secretary to acquire by condemnation lands which he is authorized to procure for public purposes, 'whenever in his opinion it is necessary or advantageous to the Government to do so'; gives jurisdiction to the courts of the United States, and makes it the duty of the Attorney General upon every application of such officer to cause proceedings to be commenced. We perceive no requirement that the Secretary should go further than to apply to the Attorney General. Moreover, the Secretary's letter certainly showed that he thought the suit would be advantageous to the Government, and we should be slow to suppose that the precise shade of his opinion upon the point affected the jurisdiction of the Court.

Judgment affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.